

November 10, 2022

Via CM/ECF and Email

The Honorable Sean H. Lane
United States Bankruptcy Court for the
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: In re 85 Flatbush RHO Mezz LLC, *et al.*,
Case No. 20-23280-shl (Bankruptcy S.D.N.Y.) (Jointly Administered)

Dear Judge Lane:

TH Holdco, LLC ("TH Holdco") submits this letter as requested by the Court yesterday to provide the Court with an update on the closing of the credit bid and related issues.

The credit bid transaction as approved by the Confirmation Order (Docket No. 280) closed yesterday.

In connection with the closing, arrangements were made to have a representative of TH Holdco, James Cole, appear on-site to begin to implement on-site transition items on the morning of Wednesday, November 9. Upon inquiry on November 8th, the person originally designated by the Debtors to meet Mr. Cole indicated to Mr. Cole that he would not be on-site on Wednesday, November 9 at all. That representative attempted to move the transition to Thursday, November 10 instead and declined to find a replacement individual to meet the closing date of November 9. After intervention from legal professionals on both sides, a new subsequent person was designated by the Debtors to meet Mr. Cole. However, this designated representative apparently had her email address deactivated, reportedly without her being advised on the deactivation, making coordination of the on-site transaction very difficult. Eventually, she did meet Mr. Cole on site on Wednesday morning. However she did not have the same level of access (e.g. no master key, access to offices, etc.) which further complicated all facets of the transition.

As noted below, the representative who was supposed to be on-site today to give access to the locked office has not appeared or been reachable.

Additionally, when Mr. Cole arrived on-site on the morning on November 9, he found individuals who appeared to be moving into the apartment portion of the property. He also found a staging company, who stated they had been hired by Sam Rubin to move furniture into a number of empty apartments. Apartments, other than the two units with signed leases provided by Debtors counsel were occupied by other individuals. When Mr. Cole attempted to talk with those individuals, they either refused to speak with him or provided vague answers such as “they were there to visit someone”. Many said they were on premises with the permission of Sam Rubin, one of the Debtors’ insiders.

TH Holdco’s counsel immediately reached out to Debtors’ counsel to address these issue. See email chain attached as Exhibit A hereto. After determining the situation was continuing and would not be remedied, TH Holdco’s counsel reached out to this Court requesting an emergency conference which was then held at 3:00 pm Eastern on Wednesday, November 9, 2022. Only Lori Schwartz from Debtors’ counsel attended that conference on behalf of the Debtors.

Prior to the conference, TH Holdco called to the premises the police, a security company and a locksmith. Mr. Cole and the police did a floor by floor walk through of the premises and found at least five (5) occupied units without leases. Many of the occupants refused to open the door to the unit they were occupying. Some of the occupants claimed they had a lease but none were unable to provide a copy of any lease or evidence of payment of rent. Some of the occupants attempted to move to another unit after being removed by the police from the unit they were initially occupying. One individual confirmed that Sam Rubin had asked him to stay in the building and stated that Sam Rubin had done the same with other individuals. The locksmith ultimately changed the locks to vacant units to address this issue and TH Holdco engaged a security company to remain on the premises. Some individuals who were removed by police later attempted to return. At least one person without a lease returned after hours in the middle of the night and was able to regain entry into the building.

Today there are at least 10-such unauthorized individuals still occupying the premises that TH Holdco knows of.

Sam Rubin and a representative of GC Realty Advisors, LLC were on premises part of yesterday afternoon as well.

In addition to the foregoing, numerous other transition items have also been problematic:

1. Systems Access. The systems access has been and remains quite a challenge. It seems the Debtors cut their domain and locked out even the property team members. TH Holdco is working with an IT company to try to retrieve the operations managers email and files, but as of the closing we have been unable to access the system data. Further, we have not been given access to the hotel side servers either.

2. Paper Records and Master Keys. TH Holdco was generally not able to access paper records yesterday. Material paper records are still missing. Certain records are reportedly in a locked office and TH Holdco has asked for access to that office to be provided today. The Debtors' representative who was supposed to meet Mr. Cole at the property at noon Eastern today did not appear and has not been responding to emails.

3. Domain Name / IP. Original domain name and similar IT-related items have not been turned over and systems at the hotel have been disabled as well (TH Holdco has so far been unable to re-activate them). Nor has any material intellectual property been turned over.

4. Cash on Hand. The Debtors received approximately \$1.9 million in mid-October per their bank statement but as of the November 9, 2022 closing date, only approximately \$6 thousand dollars remained which was transferred to the title company for the closing. In addition, TH Holdco was contacted by counsel for Consolidated Edison advising there were substantial unpaid post-petition amounts that are unpaid and past due. Further, hundreds of thousand per month has been paid to a vendor called Greater Shield and TH Holdco has evaluating payments to this vendor as well as other disbursements.

5. Lock & Building Access. The SafeLock system has been compromised in in all 64 units on the hotel side of the property. The electronic system has been disabled and all locks have been physically and intentionally damaged so that the doors can be freely accessed. TH Holdco had to engage a locksmith on an emergency basis to attempt to rectify this situation.

6. Other Deliverables. A number of the other deliverables set forth in the Court's order of yesterday (Docket No. 336) remain open and due by no later than November 16, 2022.

While reserving all rights and remedies, TH Holdco would request that this Court order that:

1. In addition to filing the August and September Monthly Operating Reports by November 16, 2022 for each estate, the Debtors shall also file their October Monthly Operating Reports for each estate by November 16, 2022 as well. The Debtors have their October bank statements already so this should be very achievable.

2. The Court require Sam Rubin and all other Debtors' insiders with knowledge to submit a sworn affidavit by Friday, November 11, 2022 at 4:00 p.m. addressing (i) all occupants without signed leases at the premises and how and when they came to be on the premises and why such unauthorized occupant were permitted ongoing access to the premises, (ii) any rents or other consideration received by any person or entity from such unauthorized occupants and (iii) relationships between any of Debtors' insiders and Greater Shield or any other creditor who has received payments since June 30, 2022 in excess of \$10,000 in the aggregate.

Mr. Goldwasser asserts he was unaware of the occupant situation as does Debtors' counsel as of yesterday, so TH Holdco believes the Court should require the declaration come from someone with direct knowledge of the facts.

3. That costs for (i) the security company, (ii) the locksmith, (iii) Dentons fees related to the occupant issue, (iv) any legal costs to evict the occupants, (v) lost rents from the inability to rent the occupied units and (vi) any charges from the New York City Police Department for being on-site yesterday be assessed against involved insiders of the Debtors jointly and severally once the Court determines who such persons are.

Further, TH Holdco requests that the Court set a further status hearing on these matters which Mr. Sam Rubin be required to attend.

Very truly yours,

Dentons US LLP



Robert E. Richards

Enclosures

Cc: Lori Schwartz
Lauren Macksoud
The Office of the United States Trustee

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EXHIBIT A

From: Lori Schwartz <lschwartz@leechtishman.com>
Sent: Wednesday, November 09, 2022 12:54 PM
To: Richards, Robert E. <robert.richards@dentons.com>; Fred Ringel <fringel@leechtishman.com>
Cc: Milenkevich, Christopher <christopher.milenkevich@dentons.com>; Macksoud, Lauren <lauren.macksoud@dentons.com>
Subject: RE: Tillary Residences

[WARNING: EXTERNAL SENDER]

I am told that the asset manager is returning to the property and meeting Mr. Rubin there to try to get them to vacate. I would appreciate if you would give them a little more time to try to remedy the situation.

Thank you,

Lori Schwartz | Partner
lschwartz@leechtishmanrb.com



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Please note my new email address.

From: Richards, Robert E. <robert.richards@dentons.com>
Sent: Wednesday, November 9, 2022 1:39 PM
To: Lori Schwartz <lschwartz@leechtishman.com>; Fred Ringel <fringel@leechtishman.com>
Cc: Milenkevich, Christopher <christopher.milenkevich@dentons.com>; Macksoud, Lauren <lauren.macksoud@dentons.com>
Subject: RE: Tillary Residences

Our onsite representative, James Cole, advised people are still walking around the apartment building and refusing to respond to his questions or leave. We will be reaching out to Judge Lane's chambers at 2 pm Eastern this afternoon to request an emergency hearing this afternoon. We reserve all other rights and remedies.



Robert E. Richards

Global Chair, Restructuring, Insolvency & Bankruptcy

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From: Richards, Robert E.

Sent: Wednesday, November 09, 2022 12:23 PM

To: Lori Schwartz <lschwartz@leechtishman.com>; Fred Ringel <fringel@leechtishman.com>

Cc: Milenkevich, Christopher <christopher.milenkevich@dentons.com>; Macksoud, Lauren <lauren.macksoud@dentons.com>

Subject: RE: Tillary Residences

Please update as to what Mr. Goldwasser's asset manager has been able to determine.



Robert E. Richards

Global Chair, Restructuring, Insolvency & Bankruptcy

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From: Lori Schwartz <lschwartz@leechtishman.com>
Sent: Wednesday, November 09, 2022 11:34 AM
To: Richards, Robert E. <robert.richards@dentons.com>; Fred Ringel <fringel@leechtishman.com>
Cc: Milenkevich, Christopher <christopher.milenkevich@dentons.com>; Macksoud, Lauren
<lauren.macksoud@dentons.com>
Subject: RE: Tillary Residences

[WARNING: EXTERNAL SENDER]

Neither Mr. Goldwasser nor the Debtors' professionals knew that anyone was on the residential property other than the 2 month to month tenants.

Mr. Goldwasser has sent one of his asset managers to the site to understand and assess the situation. I am advised he is at the property now and will report back to us. We will update you shortly.

Lori Schwartz | Partner
lschwartz@leechtishmanrb.com



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Please note my new email address.

From: Richards, Robert E. <robert.richards@dentons.com>
Sent: Wednesday, November 9, 2022 11:57 AM
To: Lori Schwartz <lschwartz@leechtishman.com>; Fred Ringel <fringel@leechtishman.com>
Cc: Milenkevich, Christopher <christopher.milenkevich@dentons.com>; Macksoud, Lauren
<lauren.macksoud@dentons.com>
Subject: FW: Tillary Residences

As a follow up to our call with Lori of a few minutes ago. Please advise as soon as you have spoken with the Debtors and/or their insiders. We are prepared to request an emergency status hearing with Judge Lane if needed this afternoon in which we would expect the Debtors' insiders to participate. We reserve all rights and remedies.